

Application No.: 10/583,500
Filing Date: June 19, 2006

REMARKS

In response to the Office Action, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the following comments and the Declaration under 37 C.F.R. § 132.

Discussion of the Claim Rejections Under 35 U.S.C. § 103

Claims 7 and 8 have been rejected under 35 U.S.C. § 103 as being unpatentable over Vermeer (U.S. Patent Number 5,624,906). Applicant respectfully submits that Claims 7 and 8 are allowable over Vermeer, as discussed below.

Discussion of Patentability of Independent Claim 7

Claim 7 recites, among other things, “an antibacterial agent having...a base **containing** polyethylene glycol 400, polyethylene glycol 600, polyethylene glycol 4000, and propylene glycol.” As transitional term “containing” is inclusive (MPEP 2111.03), the claim requires **all** of these compounds. In rejecting the claim, the Examiner took the position that the reference also discloses these humectants may be used in mixture, thus, suggesting the combination as recited in instant claim 7. However, Vermeer merely lists the claimed ingredients as a part of his list having over 30 ingredients and does not teach the specific combination recited in Claim 7. Further, Vermeer teaches “Typical levels of humectants are from 0% to about 80%”, which indicates none of the listed ingredients are essential. Thus, the cited reference does not teach all the claim limitations, and does not give any reason to pick the claimed ingredients. Accordingly, the cited reference would not match with the present claimed invention and one having ordinary skill in the art could in no way derive the claimed invention from only the cited reference. Therefore, Applicant respectfully submits that no *prima facie* case of obviousness has been established with respect to Claim 7.

Moreover, these features provide new advantages which further evidence the non-obviousness of the claimed invention. We have previously presented Declaration under 37 C.F.R. § 132 to show data indicating the advantages of the claimed composition, however the Examiner asserted the data is insufficient because:

- Amount of each component and amount of sample is not disclosed.

- It is difficult ascertain whether the better result is based on an excess of PEG4000 in sample 4.
- The result of a sample comprising only PEG400 and PEG4000 is not prescnted.
- The concentration of sample 7 & 8 is unknown.
- Initial appearance of the teeth is unknown,

As Claim 7 does not limit the amount of each component, the amount should not be an issuc. Nevertheless, Applicant submits another Declaration herewith to provide the required information.

In particular, the amount of each component and the concentration of sample 7 & 8 are described in Paragraph 5 and 6 of the declaration. For the excess of PEG4000, the ratio of PEG 4000 and PG in sample 4 was erroneously described as 3:1 and actually was 1:3. Thus, no excess amount of PEG 4000 was used. As for the result of a sample comprising only PEG400 and PEG4000, since viscosity of the PEG400 is too low and of PEG4000 is too high to use for solo base material, there would be no efficacy. Lastly, with regards to the initial appearance of the teeth, as the teeth never have a red color before, it is not necessary to compare before and after adding red food coloring. (See the attached decoration for detail.)

Thus, it appears that the base including PEG 400, PEG 600, PEG 4000, and PG of the claimed composition possesses superior penetrability. Therefore, even if prima facie case of obviousness were established, the unexpected result would rebut any such case. Applicant respectfully submits Claim 7, is allowable over the cited reference.

Discussion of Patentability of Dependent Claim 8

Claim 8 depend from Claim 7, and further define additional technical features of the present invention. In view of the patentability of Claim 7, and in further view of the additional technical features, Applicants respectfully submit that the dependent claims are patentable over the prior art.

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Request for rejoinder

Claims 1-6 and 13-16 are dependent on at least one of the elected claims. Accordingly, in accordance with M.P.E.P. 821.04, Applicants request rejoinder and examination of these claims upon allowance of the elected claims (7 and 8).

CONCLUSION

In the light of the applicant's amendments to the claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: June 14, 2010

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